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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 921

IRVING KLAW, PETITIONER

v.

ROBERT H. SCHAFFER, INDIVIDUALLY AND AS POSTMASTER OF THE UNITED STATES POST OFFICE AT NEW YORK, NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (63a)[1] is reported at 151 F. Supp. 534. The *per curiam* opinion of the United States Court of Appeals for the Second Circuit, which adopts the opinion of the District Court, is reported at 251 F. 2d 615.

[1] Record references in this brief are in the same form as in the petition. Numbers in parentheses followed by the letter "a" refer to pages in petitioner's appendix in the court below, which is part of the record here.

JURISDICTION

The judgment of the Court of Appeals was entered on January 31, 1958. The petition for certiorari was filed on April 14, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). It appears that the case has abated. That issue is discussed below, pages 8–10.

QUESTIONS PRESENTED

1. Whether the case has abated in view of the fact that the named defendant retired from office on May 31, 1957, and no substitution of his successor was made within six months.

2. Whether the Post Office may stop all mail addressed to an enterprise which is illegally using the mails for the sale of obscene matter.

3. Whether the hearing held by the Post Office Department to determine whether petitioner was violating 39 U. S. C. 259a was a fair hearing which accorded petitioner due process of law.

RULES AND STATUTE INVOLVED

Rule 25 (d) of the Federal Rules of Civil Procedure provides:

> (d) *Public Officers; Death or Separation from Office.* When an officer of the United States, or of the District of Columbia, the Canal Zone, a territory, an insular possession, a state, county, city, or other governmental agency, is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office

it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

Rule 48 (3) of the Revised Rules of the Supreme Court provides:

3. When an officer of the United States, or of the District of Columbia, a Territory, Commonwealth, Possession, State, county, city or other governmental agency, is a party to a proceeding here, and it is shown that he has died, resigned, or otherwise ceased to hold office, the action may be continued and maintained by or against his successor, if within six months after the successor takes office it is satisfactorily shown to the court, on motion, that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this paragraph may be made when it is shown in the motion that the successor of an officer adopts or continues or threatens to adopt or continue the action of his precedessor in enforcing a law averred to be in violation of the Constitution of the United States. Service of and response to a motion to substitute under this paragraph shall be made as provided by

Rules 33 and 35, respectively. Unless otherwise provided by law, no notice of appeal and no petition for writ of certiorari may be filed on behalf of an officer who has ceased to hold office.

39 U. S. C. 259a (Act of August 16, 1950, 64 Stat. 451) provides as follows:

> Exclusion from mails of obscene, lewd, etc., articles, matters, devices, things, or substances.
>
> Upon evidence satisfactory to the Postmaster General that any person, firm, corporation, company, partnership, or association is obtaining, or attempting to obtain, remittances of money or property of any kind through the mails for any obscene, lewd, lascivious, indecent, filthy, or vile article, matter, thing, device, or substance, or is depositing or is causing to be deposited in the United States mails information as to where, how, or from whom the same may be obtained, the Postmaster General may—
>
> (a) instruct postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person, firm, corporation, company, partnership, or association, or to the agent or representative of such person, firm, corporation, company, partnership, or association, to return all such mail matter to the postmaster at the office at which it was originally mailed, with the word "Unlawful" plainly written or stamped upon the outside thereof, and all such mail matter so returned to such postmasters shall be by them returned to the senders thereof, under

such regulations as the Postmaster General may prescribe; and

(b) forbid the payment by any postmaster to any such person, firm, corporation, company, partnership, or association, or to the agent or representative of such person, firm, corporation, company, partnership, or association, of any money order or postal note drawn to the order of such person, firm, corporation, company, partnership, or association, or to the agent or representative of such person, firm, corporation, company, partnership, or association, and the Postmaster General may provide by regulation for the return to the remitters of the sums named in such money orders or postal notes.

STATEMENT

This is an action by an individual, doing business in his own name, brought to restrain respondent, who was then Postmaster at New York City, New York, from enforcing an order issued by the Solicitor of the Post Office Department forbidding the payment to petitioner of any money orders addressed to him and directing that all mail addressed to petitioner should be returned to the sender marked "Unlawful: Mail to this address returned by order of the Postmaster General" (29a–30a). The order was issued after a hearing in the Post Office Department upon a complaint by an Assistant Solicitor charging that petitioner was conducting an enterprise through the mails in violation of 39 U. S. C. 259a, by soliciting money for obscene matter and by giving information as to where, how and from whom such matter may be obtained. Proceedings were begun against petitioner by the Post

Office Department on May 27, 1955 (2a). On August 2, 3, and 4, 1955, a hearing was held at which the complainant offered in evidence various photographs, movies, cartoons, slides and advertisements which petitioner had caused to be deposited in the mails (3a). These materials included pictures commonly known as "pin-up" pictures, and photographs, drawings, cartoons and motion pictures of scantily clad women bound, gagged and otherwise fettered; or inflicting and being subjected to varieties of physical torture, by each other, or by means of machines, instruments and devices; or wearing tightly laced, strapped or fastened girdles, boots, belts, hoods, straitjackets, or other similarly constricting clothing (54a). Both sides presented expert testimony on matters pertaining to sexual behavior (9a). On December 16, 1955, the Post Office Department's hearing examiner issued an initial decision concluding that petitioner was conducting an enterprise in violation of 39 U. S. C. 259a (2a–19a). This decision was affirmed by the Solicitor of the Post Office Department on July 9, 1956 (25a–29a), and an order was issued to respondent by the Solicitor forbidding him to pay money orders addressed to petitioner and directing him to return petitioner's mail to the sender (29a–30a).

On July 19, 1956, petitioner filed a complaint in the district court seeking to restrain respondent from enforcing the order and praying for a declaratory judgment that it was invalid (1a). Respondent moved for summary judgment on July 31, 1956, and petitioner cross-moved for summary judgment on August

6, 1956 (2a). The District Court issued an opinion upholding the stop order on May 7, 1957 (49a–62a). This opinion analyzed in detail petitioner's contentions that the order was illegal. The court held that 39 U. S. C. 259a authorized a stop order against all mail addressed to petitioner, including mail against which no determination of obscenity had been made (50a–51a), and that, as so construed, the statute did not authorize a prior restraint invalid under the First Amendment (51a–54a). The court further found that the Post Office Department's decision that the materials involved were obscene was supported by substantial evidence (56a); that there was evidence to support the finding that petitioner was depositing information in the mails as to where obscene matter might be obtained (59a); that the administrative hearing did not deny petitioner due process of law (59a–61a); that 39 U. S. C. 259a was not unconstitutionally vague; and that the stop order against petitioner's mail was not a cruel and unusual punishment (61a–62a).

On May 31, 1957, Robert H. Schaffer resigned as postmaster at New York, New York. Effective with the close of business on that day, Mr. Howard Coonen, Regional Operations Director, was designated to take charge of the New York City post office, and has continued in that assignment since that date (Appendix A, *infra*, p. 20). As such, Mr. Coonen was successor to Mr. Schaffer as the officer responsible for the enforcement of the order against which petitioner is complaining. No application to continue the action

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against the successor was made, nor did either party call the problem of abatement or substitution to the attention of the Court of Appeals.

The case was argued in the Court of Appeals on January 9 and 10, 1958. On January 31, 1958, the Court of Appeals affirmed, *per curiam,* on the opinion of the District Court, citing *Roth* v. *United States,* 354 U. S. 476, and *Public Clearing House* v. *Coyne,* 194 U. S. 497.

ARGUMENT

Petitioner does not in this Court question the holding that the merchandise found by the Post Office to be obscene is in fact obscene. He here challenges only the validity of an order which stops delivery of all mail, and also asserts certain alleged procedural errors during the administrative hearing. Before reaching those two questions there is a preliminary jurisdictional question of abatement.

I

ABATEMENT

Respondent Robert H. Schaffer, the only party defendant herein, resigned as Postmaster of the New York City Post Office on May 31, 1957. Effective at close of business the same day, Mr. Howard Coonen, Regional Operations Director, was designated to take charge of the United States Post Office at New York, New York (Appendix A, *infra,* p. 20). Mr. Coonen is presently exercising all authority formerly exercised by respondent in connection with the enforcement of the postal stop order outstanding against

petitioner, and as such is a necessary party. Since respondent no longer holds office and is without any authority whatever over the operations of the New York Post Office, this action against him necessarily abated because his successor was not substituted as party defendant within six months after taking office. Supreme Court Rule 48 (3); Federal Rules of Civil Procedure 25 (d). See *Snyder* v. *Buck*, 340 U. S. 15; *United States ex rel. Bernardin* v. *Butterworth*, 169 U. S. 600; *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28, 31; *United States* v. *Boutwell*, 17 Wall. 604, 608; *The Secretary* v. *McGarrahan*, 9 Wall. 298, 313.

Under this Court's Rule 48 (3) and Rule 25 (d) of the Federal Rules of Civil Procedure, this action could have been continued after respondent's separation from office only if his successor, Mr. Coonen, had been substituted before December 1, 1957. No such substitution was made. The absence of a necessary party and the time barrier to substitution "go to jurisdiction"; the rule of abatement for failure to substitute is "not to be altered by an agreement of the parties or by some theory of estoppel." *Snyder* v. *Buck*, 340 U. S. 15, 19, 22. Since respondent no longer holds office, and it is too late to substitute his successor, the judgment below cannot be reviewed on the merits by this Court.[2] In these circumstances we

[2] After being informed recently, after the petition for certiorari was filed, that respondent had resigned from office over eleven months ago, petitioner, on May 26, 1958, filed a motion in this Court to substitute respondent's successor as party defendant in this action. We believe the reasons set forth above demonstrate that this motion cannot now be granted. We shall not

believe certiorari should be denied. Under its prior decisions, the Court is not free to pass upon any of the questions presented in the petition for certiorari.

We see no reason for the Court to grant certiorari in order to consider the consequences of abatement. However the Court may wish, consistent with its action in other cases, to grant the petition for certiorari, vacate the judgments below, and remand the case to the District Court with directions to dismiss the proceeding as abated. *Matheus* v. *United States ex rel. Cunningham*, 282 U. S. 802; *United States ex rel. Claussen* v. *Curran*, 276 U. S. 590.

II

SCOPE OF THE STOP ORDER

Petitioner, by his own account, has "been engaged in the business of selling moving pictures, photographs, slides, and drawings" (36a). He also sells

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file any separate response to it. Substitution could not be effected at this late date even if the Government were to acquiesce in petitioner's motion. *Matheus* v. *United States ex rel. Cunningham*, 282 U. S. 802; *United States ex rel. Claussen* v. *Curran*, 276 U. S. 590, 591; see *Snyder* v. *Buck*, 340 U. S. 15, 19, fn. 6.

It should be noted that the rule cuts both ways. The Government cannot file a petition for certiorari or a notice of appeal in this Court on behalf of an officer who has ceased to hold office. Supreme Court Rule 48 (3). (On May 13, 1958, the Court of Appeals for the Second Circuit decided two cases *against* the same postmaster—again, apparently, cases in which no substitution had been made. *Columbia Research Corp., et al.* v. *Schaffer*, No. 24831; *Vibra Brush Corp.* v. *Schaffer*, No. 24683.)

a few books (37a). He estimates that he has two and a half million still photographs in his inventory (38a). Petitioner does not here challenge the fact that he has been violating the law with respect to more than 35% of his business. He contends, however, that "more than 60 percent of my business concerns articles against which the Post Office Department has filed no complaint" (37a). On this basis, petitioner challenges the order which stops all mail addressed to him at his business office in New York.

The statute (*supra*, p. 4) provides that, upon evidence satisfactory to the Postmaster General that any person is obtaining remittances through the mail for obscene material, the Postmaster General may instruct the local postmasters to return "all" mail directed to any such person and forbid the payment to any such person of any money order. The order here involved (29a–30a) did that. Both courts below found the order to be within the statute and the statute within the constitutional power of Congress.

We believe the decision to be correct. Faced with a similar question, this Court stated in *Public Clearing House* v. *Coyne*, 194 U. S. 497, 510:

> Nor do we think the law unconstitutional, because the Postmaster General may seize and detain *all letters, which may include letters of a purely personal or domestic character, and having no connection whatever with the prohibited enterprise*. In view of the fact that by these sections the postmaster is denied permission to open any letters not addressed to

himself, there would seem to be no possible method of enforcing the law except by authorizing him to seize and detain all such letters. It is true it may occasionally happen that he would detain a letter having no relation to the prohibited business; but where a person is engaged in an enterprise of this kind, receiving dozens and perhaps hundreds of letters every day containing remittances or correspondence connected with the prohibited business, it is not too much to assume that, *prima facie* at least, all such letters are identified with such business. *A ruling that only such letters as were obviously connected with the enterprise could be detained would amount to practically an annullment of the law,* as it would be quite impossible, without opening and inspecting such letters, which is forbidden, to obtain evidence of the real facts. [Emphasis added.]

Petitioner's reliance upon *Donaldson* v. *Read Magazine,* 333 U. S. 178, is, we submit, misplaced. There the original order stopped mail and remittances to a number of addressees some of whom were not designated in the advertisements found to be fraudulent. Prior to reargument the order was modified. The Court found that:

> As modified, the order bars delivery of mail and payment of money orders only to addressees designated in the contest advertisements. * * * [333 U. S. at 183]

As modified, the order was upheld. The order here applies only to the individual named in the advertisements involved.[3]

Although believing the decision below to be correct,[4] we agree with petitioner that it is in conflict with decisions of the Court of Appeals for the District of Columbia Circuit.[5] Under these circumstances we would not oppose certiorari on this issue but for two considerations: the first is the problem of abatement, discussed above (*supra*, pp. 8–10); the second is the fact that the validity of the broad form of order involved in this case now appears to be a matter of no continuing importance.

There have been recent administrative changes within the Post Office Department resulting in changes in practice which directly affect all outstanding and future stop orders issued against enterprises using the

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[3] The order is limited to "Irving Klaw, and his agents and representatives as such" (29a). Petitioner's affidavit states that he is complaining against the refusal to deliver mail "addressed to me at 212 East 14th Street, New York 3, New York" (32a). Petitioner's home address is in Brooklyn (31a). There is no order preventing the delivery of personal or other mail to him there.

[4] See also the material presented in the petition for certiorari filed on behalf of the Postmaster General in *Summerfield* v. *Tourlanes Publishing Co. and Ray A. Oakley, et al.*, No. 347, October Term 1956.

[5] *Summerfield* v. *Sunshine Book Co.*, 95 App. D. C. 169, 221 F. 2d 42, certiorari denied, 349 U. S. 921; *Tourlanes Publishing Co.* v. *Summerfield*, 98 App. D. C. 20, 231 F. 2d 773, certiorari denied, 352 U. S. 912; *Oakley* v. *Summerfield*, 98 App. D. C. 22, 231 F. 2d 775, certiorari denied, 352 U. S. 912.

mails illegally.[6] Since March 27, 1958, a different form of stop order has been issued by the Post Office Department. The new form of order differs in two important respects from the order issued in this case. It does not stop any mail which can be identified on the face of the envelope or wrapper as not relating to the unlawful or fraudulent enterprise. Secondly, all other mail is held at the local post office for twenty-four hours during which time the addressee may, if he chooses, examine the mail in the presence of a postal employee and receive all of the mail that is not connected with the unlawful or fraudulent enterprise. The form of stop order now being issued obviously does not raise the statutory and constitutional issues on which petitioner asks this Court to pass. In his Questions Presented, petitioner emphasizes that he is challenging an order which prohibited the "receipt of *all* mail," italicizing the word *all* three times (Pet. 2).

Not only does the issue as to which there is conflict between the circuits have no future relevance, it is not even relevant in this case. By formal notice to all postmasters (see Appendix B *infra*, p. 21), a copy of which has been published in the Federal Register of

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[6] For some time the Post Office Department has been reviewing its practice and procedure in obscenity and fraud cases. Mr. Herbert B. Warburton, the new General Counsel of the Post Office, took office as Acting General Counsel on February 12, 1958, and was sworn in as General Counsel on May 27, 1958. During the past few months, there have been substantial changes in the fraud and nonmailability area, including the establishment of a judicial officer within the Post Office Department, 23 F. R. 2817, and the issuance of new Rules of Practice, 23 F. R. 2794–2799.

May 29, 1958, 23 F. R. 3740, the addressee affected by any broad stop order issued prior to the new policy may, upon request to his local postmaster, have the order amended to incorporate the new provisions. Petitioner in this case may, upon application, have the outstanding order of which he complains amended so that it will no longer stop all his mail. Cf. *Donaldson* v. *Read Magazine,* 333 U. S. 178, 184:

> The possibility that another order might be entered against the eliminated respondents is too remote to require us to consider the original order as though modification had never been made.

Although in our view the case has abated, it is not, of course, moot. Nor need it be remanded to the court below to be considered in the light of the new relief available to petitioner. We assume that petitioner's contentions as to statutory authority and constitutionality should be applied *pro tanto* to the narrower order now available to him. And we assume that the courts below, having upheld the broader order, would uphold the narrower one. But the issues raised by the new form of order are ones as to which there is no conflict of views among the circuit courts. The issues also are ones as to which, we submit, there is no serious statutory or constitutional question. See 39 U. S. C. 259a, *supra,* pp. 4–5; *Public Clearing House* v. *Coyne,* 194 U. S. 497; *Donaldson* v. *Read Magazine,* 333 U. S. 178.

Petitioner complains that mail is to be stopped "for the indefinite future" (Pet. 2). But petitioner himself has the power to renew full mail service for

his business address by coming forward with reasonable evidence that he has abandoned the practice of using the mails to sell obscenity.[7] The key to his mailbox is simply compliance with the law.

III

ALLEGED ERRORS IN THE ADMINISTRATIVE HEARING

Petitioner's claims of unfairness in the administrative hearing, which have been reviewed and rejected by both the District Court and the Court of Appeals, do not present any question of general importance which would warrant review by this Court. "A large amount of discretion in the conduct of a hearing is necessarily reposed in an administrative agency" (*Reilly* v. *Pinkus,* 338 U. S. 269, 276), and it is only in the most unusual circumstances that the courts will interfere with the manner in which that discretion was exercised. In the *Reilly* case, this

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[7] The procedure by which this may be accomplished is set forth in 23 F. R. 2798 (Sec. 201.33):

> *Modification or revocation of orders.* (a) Any party against whom an order has been issued may file with the Docket Clerk an original and three copies of an application for modification or revocation by the Judicial Officer. Said application shall set forth the grounds upon which it is based; must contain a statement to the effect that the unlawful enterprise against which the order is directed is no longer being conducted under the name or names specified in the order or any other name and that the unlawful scheme will not be resumed in the future under such names or any other names; and it must be sworn to by the applicant.

This remedy has long been available to petitioner. See 39 C. F. R. 201.27 (Supp. 1955).

Court held that a fraud order could not stand, where a postal hearing officer, by applying an erroneous substantive standard for postal fraud, had unduly restricted the alleged fraud-doer's right to rebut the evidence against him. In this case, on the contrary, petitioner does not challenge the substantive standards of obscenity applied by the Post Office Department or the sufficiency of the evidence in support of the finding that he is trafficking in obscene matter. These questions are avoided, even though objections to the manner in which the evidence was taken become meaningful only in relation to the substantive questions of whether petitioner's advertisements offer obscenity, and whether his merchandise is itself obscene. The substantive issues were resolved by testing the primary evidence of petitioner's abuse of the mails, his merchandise and advertisements, against the legal standard for obscenity. In this light, we believe it is plain that the evidentiary rulings of which petitioner complains had no substantial effect upon the Hearing Examiner's assessment of the character of petitioner's wares.

Petitioner's claims of unfairness are based on four evidentiary rulings, all peculiar to this case. First, he urges that the Hearing Examiner was prejudiced by the introduction into evidence of examples from the large volume of complaints received by the Post Office Department about his merchandise. But even a cursory examination of the Hearing Examiner's decision shows that his decision was not in the least based on these materials. The Examiner was not

concerned with complaints about petitioner's merchandise, but with the merchandise itself.

Second, petitioner complains of two rulings in connection with the psychiatric testimony received on the question of whether the sado-masochistic materials among petitioner's merchandise would provoke sex crimes. On cross-examination, petitioner sought to discredit the testimony of a Government witness, Dr. Benjamin Karpman, Chief Psychotherapist at St. Elizabeth's Hospital. The Examiner limited petitioner's efforts. Further, the Examiner admitted, over petitioner's objections, the testimony of a prison psychologist, Dr. Alan Canty, about pictures similar to petitioner's sado-masochistic merchandise, which had been taken from a convicted sex offender. Neither of these rulings, however, limited petitioner's opportunity to show that his merchandise is not obscene when tested by the legal standard for obscenity, and the Examiner's final decision was not based upon the conflicting opinions of experts as to the possible criminal effects of petitioner's merchandise. Material is obscene not because it will provoke sex crimes, but because it is designed to appeal to a prurient or morbid interest in sex, as recognized by the average person applying contemporary community standards. Disregarding the conflicting expert opinions about the possible criminal effects of petitioner's merchandise, the Examiner made an independent judgment by testing it against the legal standard for obscenity. That mer-

chandise itself gives overwhelming evidence of its obscene character.[8]

Finally, petitioner complains that the Examiner rejected his attempt to prove discrimination by an offer of allegedly similar materials from various sources which have not been charged with obscenity. The circulation of such materials, however, is irrelevant to the issue of whether petitioner's merchandise is obscene. The fact that others are attempting to pander to prurient interests does not in any way exculpate petitioner.

Thus, quite apart from the narrow scope of petitioner's procedural contentions, a factor which in itself renders them unworthy of further review, we submit that they are clearly without merit.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
ROGER FISHER,
Assistant to the Solicitor General.
SAMUEL D. SLADE,
HOWARD E. SHAPIRO,
Attorneys.

JUNE 1958.

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[8] The original exhibits are part of the record in this Court.

APPENDIX A.

(Post Office Department letter as to successor to respondent):

THE DEPUTY POSTMASTER GENERAL,
Washington 25, D. C., May 27, 1958.

Honorable GEORGE COCHRAN DOUB,
Assistant Attorney General,
Civil Division, Department of Justice,
Washington 25, D. C.

DEAR MR. DOUB:

This is to advise you that Robert H. Schaffer resigned as Postmaster at New York, New York, as of May 31, 1957, and since that time has had no connection with or supervision over the operations of the New York post office.

Upon Mr. Schaffer's separation, Mr. Howard Coonen, Regional Operations Director, New York Postal Region, was designated to take charge of the New York post office effective as of the close of business May 31, 1957. Mr. Coonen has performed the functions of Postmaster at New York City since that date. In this capacity, he is responsible for the administration of all postal stop orders outstanding against addressees in New York City.

Sincerely yours,

/s/ E. O. Sessions,
E. O. SESSIONS,
Deputy Postmaster General.

APPENDIX B

(Authorization to amend outstanding stop orders)

23 F. R. 3740, May 29, 1958

MAIL ADDRESSED TO CONCERNS AND ENTERPRISES AGAINST WHICH UNLAWFUL OR FRAUD ORDERS HAVE BEEN ISSUED

The following notice to all Postmasters was published in the POSTAL BULLETIN of May 29 [28], 1958 [Postal Bulletin 20086, page 1]:

Since March 26, 1958, the Department has issued "unlawful" and "fraud" orders which provide that all mail identifiable on its face as not connected with the unlawful or fraudulent enterprise may be delivered to the addressee. The new form of order also provides that all other mail will be held for twenty-four hours during which time the addressee may, if he desires, open it in the presence of the postmaster or his designee, and claim any mail not connected with the unlawful or fraudulent enterprise. This section is as follows:

> You are hereby instructed to hold all letters, whether registered or not, and all other mail matter which shall arrive at your office directed to the said ———, except those which can be identified on the face of the envelope or wrapper as not relating to this enterprise such as letters from public utilities, Federal, State or Municipal agencies, doctors, lawyers, churches, magazines or newspapers. All mail not so identified shall be held for 24 hours after

its receipt during which time the concern and parties shall have the right to examine the mail at a reasonable time in your presence or the presence of a postal employee designated by you, and receive such mail as is not connected with the (unlawful) (fraudulent) enterprise.

Please notify all enterprises having orders issued against mail received at your post office that they shall have, on request to you, the above provisions incorporated into the order issued against their mail. Authority for making this modification on orders issued prior to March 26, 1958, is hereby delegated to you (each Postmaster).

CHARLES D. ABLARD,
Judicial Officer.

U. S. GOVERNMENT PRINTING OFFICE: 1958